

PATENT

Attorney's Docket No. 031456/259348

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	10/661,848	Confirmation No.:	8549
Applicant(s):	Moehlenbrock et al.		
Filed:	September 12, 2003		
Art Unit:	1772		
Examiner:	Walter Aughenbaugh		
Title:	IMPROVED PACKAGING FILMS AND METHODS OF PRODUCING THE SAME		

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Commissioner for Patents

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REPLY BRIEF UNDER 37 CFR § 41.41

This Reply Brief is submitted in response to the Examiner's Answer dated March 13, 2008.

The rejections are based on an interpretation of "substantially impermeable to oxygen" as being equivalent to "permeable to oxygen", since "substantially impermeable" means that there is *some* degree of permeability (Examiner's Answer, pp. 12-13). Appellant submits this interpretation is a technicality that would not have been considered relevant by a person of ordinary skill in the art when deciding whether to combine the Forte and Antoon references.

Forte describes his multilayer film as "breathable", meaning it allows moderate to high transmission rates of water vapor and oxygen (col. 1, lines 16-20). Logically, each and every layer of Forte's film thus must allow moderate to high transmission rates of water vapor and oxygen, since the overall multilayer film cannot be more-transmissive than any of its layers. Thus, a person of ordinary skill in the art would have understood that Forte's "B" layer allows moderate to high transmission rates of water vapor and oxygen.

Antoon describes his silicone-coated microporous film as being “substantially impermeable to oxygen”. According to the reasoning underlying the rejections, the microporous film is therefore “oxygen permeable” within the meaning of the present claims, since the claims do not place any numerical limit on oxygen permeability. The rejections then make the further leap of reasoning that a person of ordinary skill would therefore have been led to modify Forte’s film to replace the “B” layer with Antoon’s microporous film (see Ex. Answer, paragraph bridging pp. 14-15).

Appellant respectfully submits that this reasoning confuses a claim scope issue with the question as to whether a person of ordinary skill would have combined the references. A person of ordinary skill reading Forte’s objective of *moderate to high transmission rates* would not have been led to replace Forte’s “B” layer with Antoon’s microporous layer that is described as “substantially *impermeable* to oxygen”. A film described as “substantially impermeable to oxygen” would not have been interpreted as allowing a moderate to high transmission rate of oxygen.

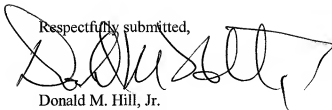
The person of ordinary skill considering Antoon’s teachings would not have applied the kind of reasoning that a Patent Office Examiner uses when construing a patent claim (i.e., “substantially impermeable” = “permeable”). Rather, Appellant submits that Antoon’s description of his microporous film as “substantially impermeable to oxygen” would have led the person to conclude that such film would be completely unsuitable for incorporation into Forte’s multilayer film, where the objective is a moderate to high transmission rate of oxygen.

Thus, contrary to the rejections, it is submitted that Forte and Antoon would not have been combined.

Appellant respectfully submits that for at least this reason, the rejections are erroneous and should be reversed.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald M. Hill, Jr.", written over the typed name.

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